



February 08, 2010

The Honorable Charles E. Schumer
Chairman
Committee on Rules and Administration
UNITED STATES SENATE
305 Russell Senate Office Building
Washington, DC 20510

RE: Clarification of the Record: *Examining the Supreme Court's Decision to Allow Unlimited Corporate Spending in Elections*

Dear Chairman Schumer:

In reviewing a web cast of the Feb 2 hearing, I believe that Senator Durbin may have taken my position to be that the Fair Elections Now Act, S. 752, contains election-nullification provisions similar to those of the Clean Elections Commission of Arizona. That is not my position and not the basis for my recommendation to the Committee.

My recommendation was for Senators to understand fully FENA's "de-Certification" provisions before adopting any FENA legislation. The provisions to which I was referring are partially listed in Sec. 515(b)(1)(B), below.

SEC. 515. CERTIFICATION.

`(a) In General- Not later than 5 days after a candidate for Senator files an affidavit under section 511(a)(3), the Commission shall--

`(1) certify whether or not the candidate is a participating candidate; and

`(2) notify the candidate of the Commission's determination.

`(b) **Revocation of Certification-**

`(1) IN GENERAL- The Commission may revoke a certification under subsection (a) if--

`(A) a candidate fails to qualify to appear on the ballot at any time after the date of certification; or

`(B) a candidate otherwise fails to comply with the requirements of this title, including any regulatory requirements prescribed by the Commission.

`(2) REPAYMENT OF BENEFITS- If certification is revoked under paragraph (1), the candidate shall repay to the Fund an amount equal to the value of benefits received under this title plus interest (at a rate determined by the Commission) on any such amount received.

During the hearing, many commented on the possibility that private constituents may enjoy increased influence over a candidate's election outcome after the Supreme Court's opinion in *Citizens United*. My recommendation is for Senators considering FENA to understand the out-of-proportion influence that Fair Elections Commissioners may have upon a candidate's funding if FENA becomes law.

If 2009 has taught us anything, it is that tax subsidies come with strings. Senators favoring FENA may one day be surprised to learn just how much they are like other Americans on this score. My reading of FENA is that it provides the one thing reform advocates have long been seeking for enforcement commissioners and the thing no election commissioner should ever be given: "relevance." FENA, as written, would give Fair Election commissioners the ability to determine the outcome of an election by determining which of competing candidates may keep his federal funding. I would advise deleting, amending, or clarifying this provision before discussing FENA any further. Any candidate that becomes certified should stay certified until after the election.

Respectfully submitted,

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